

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8158 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgement?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?
- 1 to 5 : No

-----  
CHAMPAKBHAI GOVINDBHAI PATEL SINCE DECEASED THROUGH HEIRS

Versus

APPELLANT AUTHORITY & EX-OFFICIO SECRETARY

-----  
Appearance:

MR MI HAVA for Petitioners

MR ST MEHTA, AGP for Respondent No. 1

-----  
CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 05/10/98

ORAL JUDGEMENT

This petition has been filed for quashing the order dated 21st March 1989 of the Urban Land Tribunal and Secretary, Revenue Department, Ahmedabad and the order dated 16th April 1985 of the Competent Authority. In the proceedings under Section 8(3) of the Urban Land (Ceiling and Regulation) Act, 1976 (which will be referred hereinafter as 'the Act'), the Competent

Authority and Deputy Collector, Surat, declared total land of 17,270 sq.mtrs. as surplus land, by order dated 16th April 1985. An Appeal No.127 of 1985 was filed by the heirs of Govindbhai Prabhubhai and Thakorebhai Prabhubhai before the Urban Land Tribunal, Ahmedabad. Govindbhai Prabhubhai filled in Form No.1 regarding the following properties:

(1) Bhestan - Survey No.83 Agri. 2-23-17 (23270 sq.mtrs.)

(2) Bhestan property - 23-3 - residence - 2-75-00

(3) Bhestan property - 234 - residence - 0-40-00

Thakorebhai Prabhubhai filled in Form No.1 in respect of the following properties:

(1) Bhestan - Survey No. 84, Agri. land - 5 acre 25 gunthas.

(2) Bhestan House.

2. The learned Counsel for the petitioners submitted that the property in dispute is the ancestral property and there are 16 co-sharers and the affidavit regarding the heirs of the original holders was filed before the appellate authority as well as before the Competent Authority. The appellate authority erred in not considering the shareholders of the land in dispute and the contention of the petitioners was rejected only on the ground that the petitioners have not produced any proof regarding the fact that the property was ancestral and all the 16 persons were co-sharers. Accordingly, the appellate authority had dismissed the appeal by order dated 21st March 1989. The learned Counsel for the petitioners further submitted that the Town Planning Scheme, Surat has also taken 3269 sq.mtrs. of land out of Survey No.83 for roads. The Block which is constructed, i.e. Bhestan property 23-3; Bhestan property 234 and Bhestan house are likely to be excluded under the provisions of Section 2(q)(ii) of the Act and the remaining property - Survey No.84, i.e. agricultural land in respect of which the permission has already been granted and that is not in dispute. In the property of Survey No.83, there are 16 co-sharers and the land in the area 3269 sq.mtrs. has been taken under the Town Planning Scheme. Thus, the land in question is not surplus land. He requested that the matter be remanded back to the Competent Authority where the proof of the co-sharers and the actual area of the property could be

determined by the said authority. The learned Counsel for the State has no objection so far the prayer by the learned Counsel for the petitioner.

4. I have considered the request of the learned Counsel for the petitioners and have perused the relevant papers. It appears that the petitioners before this Court are the heirs of Govindbhai Prabhubhai and Thakorebhai Prabhubhai. If they were entitled on the date of the enforcement of the Act, i.e. 17th February 1976, as co-sharers, they are entitled to one unit each. The learned Counsel for the petitioners has filed certain papers to show that the Town Planning Scheme, Surat has taken some part of Survey No.83. In the facts and circumstances, I think it is proper that the matter be remanded back to the Competent Authority to decide the units to the co-sharers after excluding the property which has been taken under the Town Planning Scheme and constructed property. Accordingly, the petition is allowed and the impugned order dated 21st March 1989 of the Urban Land Tribunal and the order dated 16th April 1985 of the Competent Authority are set aside and the matter is remanded back to the Competent Authority to decide afresh in accordance with law after taking into consideration the observations made herein as far as possible within three months from the date of receipt of the certified copy of this order. Rule is made absolute accordingly. No costs.

\*\*\*\*\*

sreeram.